DRAFT RULE AMENDMENTS
DANGEROUS WASTE REGULATIONS – CHAPTER 173-303 WAC
MARCH 2004

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SECTION 1
Draft Rule Language for State-Initiated Amendments

1. WAC 173-303-010

This regulation implements chapter 70.105 RCW, the Hazardous Waste Management Act of 1976 as amended, and implements, in part, chapters 70.105A, 70.105D, and 15.54 RCW, and Subtitle C of Public Law 94-580, the Resource Conservation and Recovery Act, which the legislature has empowered the department to implement. The purposes of this regulation are to:
(1) Designate those solid wastes which are dangerous or extremely hazardous to the public health and environment;
Note: the terms public health and human health are used in this chapter interchangeably.

Reason for amendment: Throughout the Dangerous Waste Regulations the terms "public health" and human health" are used interchangeably. On several occasions, we have received requests to change the term "human health" where it appears in the regulations to "public health" because WAC 173-303-010 uses the term public health, and comments received have indicated that the term human health is too broad. This issue has arisen in the context where some facilities do not consider themselves as "public" nor that their employees are the "public". This change clarifies that public health and human health are used interchangeably throughout the regulations.

2. WAC 173-303-040

"Designated Facility" means a dangerous waste treatment, storage, or disposal facility that has received a permit (or interim status) in accordance with the requirements of this chapter, has received a permit (or interim status) from another state authorized in accordance with 40 CFR Part 271, has received a permit (or interim status from EPA in accordance with 40 CFR Part 270, or is regulated under WAC 173-303-120 (4)(c) or 173-303-525 when the dangerous waste is to be recycled, and that has been designated on the manifest pursuant to WAC 173-303-180(1). If a waste is destined to a facility in an authorized state that has not yet obtained authorization to regulate that particular waste as dangerous, then the designated facility must be a facility allowed by the receiving state to accept such waste. The following are designated facilities only for receipt of state-only waste; they cannot receive federal hazardous waste from off-site: Facilities ~~with permit-by-rule under WAC 173-303-802 (5)(a) and facilities~~ operating under WAC 173-303-500 (2)(c).
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Reason for amendment:
This change is for consistency with the change in permit by rule requirements at WAC 173-303-802(5) that allow federally regulated hazardous wastes to be accepted at wastewater treatment units.

3. WAC 173-303-040
"Partial closure" means the closure of a dangerous waste management unit in accordance with the applicable closure requirements of WAC 173-303-400 and 173-303-600 through 173-303-695 at a facility that contains other active dangerous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other dangerous waste management unit, while other units of the same facility continue to operate.

Reason for amendment:
The citation is corrected for consistency.

4. WAC 173-303-040
"Surface impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), and which is designed to hold an accumulation of liquid ~~dangerous~~ wastes or ~~dangerous~~ wastes containing free liquids. The term includes holding, storage, settling, and aeration pits, ponds, or lagoons, but does not include injection wells.

Reason for amendment: Consistency with EPA.

5. WAC 173-303-045
(2) The following sections and any cross-reference to these sections are not incorporated or adopted by reference because they are provisions that EPA cannot delegate to states:
(a) 40 CFR Parts 260.1 (b)(4)-(6) and 260.20-22.
(b) 40 CFR Parts 264.1 (d) and (f); 265.1 (c)(4); 264.149-150 and 265.149-150; 264.301(l); and 265.430.

Reason for amendment:
The citation is corrected as noted in EPA's codification review.

6. WAC 173-303-060 Notification and identification numbers
(1) Any person who generates, transports, offers for transport, or transfers a dangerous waste, or who owns or operates a dangerous waste TSD facility must have a current EPA/state identification number (EPA/state ID#). An EPA/state ID# is issued to TSD facilities and generators by site. A State Registration Number is assigned to transfer facilities by site. Any person who offers a dangerous waste to a transporter or to a dangerous waste TSD facility that does not have an EPA/state ID#, or whose EPA/state ID# has been cancelled or withdrawn, is in violation of this regulation.

Reason for amendment: This addition is a clarification of how site identification numbers are issued.

7. WAC 173-303-060 Notification and identification numbers.

(2) Every person who must have an EPA/state ID#, and who has not already received their ID#, must notify the department by obtaining and completing a Washington State Dangerous Waste Site Identification Form according to the instructions on the form and submitting the completed form to the department. Any person already assigned an EPA/state ID# must notify the department of any changes to their company's name, mailing address, ownership, physical location, or type of dangerous waste activity, by submitting a revised form. A revised form must be submitted prior to adding or dropping any of the following activities: Permitted treating, storing and/or disposing, immediate recycling, transporting, permit by rule, and/or treatment by generator. Any change in site location will require the issuance of a new EPA/state ID# for waste generation and management facilities. An EPA/state ID# may not be used at new company locations. A company that has obtained an ID# as a "transporter only" can move to a new location and continue to use the same ID#. A revised Dangerous Waste Site Identification Form must be submitted to the department. Dangerous Waste Site Identification Form and instructions for its completion may be obtained by contacting the department.

(5) Any person with a current EPA/state ID# must submit an annual report as required by WAC 173-303-070(8), 173-303-220, and 173-303-390. Any person who has withdrawn or cancelled their ID# must submit an annual report up to the effective date of cancellation or withdrawal. The generator should write the effective date on the Dangerous Waste Site Identification form for the cancellation or withdrawal; it is the date by which all regulated waste activities (generation, transportation, and management) have ceased at the site.

Note: A consultant is not authorized to sign a Dangerous Waste Site Identification Form, nor may they be considered a contact for site visits or as a mailing contact for forms.

Also, change "notification form 2" to "Dangerous Waste Site Identification Form" at: WAC 173-303-210(2) and WAC 173-303-240(6)(a)

Reason for amendment: To reflect renaming of the form.

The note regarding who signs the form was added to clarify that consultants cannot sign the Form 2s (Site Identification Forms). A consultant cannot be considered a contact for site visits or as a mailing contact for forms and should not be included on the forms in any manner. Experience has shown that a consultant may be hired and available to assist in obtaining the Washington Identification Number. But they may not be contracted to complete and submit waste reports at the end of the year. The consultant, no longer working for the client, may toss out or otherwise disregard forms sent to him after his employment by the company is no longer in effect. If the legal owner of the business or other direct contact staff are not included in the mailing process, they may not be aware of the reporting requirements.

8. WAC 173-303-070(8)

(d) If a small quantity generator's used oil is to be recycled by being burned for energy recovery or re-refined, the used oil is subject to WAC 173-303-515.

Reason for Amendment: This addition is being made to clarify application of the used oil management standards to small quantity generator used oil. This intent was made clear in the Federal Register Notice in 1992. This addition results in consistency between the federal and the state regulations.

9. WAC 173-303-071(3)

(g) Treated wood waste and wood products including:
(i) Arsenical-treated wood that fails the test for the toxicity characteristic of WAC 173-303-090(8) (dangerous waste numbers D004 through D017 only)~~,~~ or ~~which~~ that fails any state criteria. ~~, if the waste~~ In order to meet the exclusion the wood product must have been previously used in typical treated wood applications (e.g. fence posts, decking, or landscaping timbers).

Reason for Amendment: Clarification is needed for the arsenical-treated wood exclusion (WAC 173-303-071(3)(g)(i)) to clear up confusion about the terms of the conditional exclusion. Some people have misinterpreted the phrase "if the waste is generated by persons who utilize the arsenical treated wood for the material's intended end use" to mean that the exclusion only applies if the treated wood waste is reused for its intended end use, such as fence posts and landscaping timbers. Solid waste disposal would not be allowed.

This revision will clarify that in order to meet the exclusion, the treated wood product needs to have been previously used, and used in a manner typical for treated wood. Arsenical-treated wood waste or sawdust generated by wood preserving facilities or sawmills would not qualify as a typical use. Also, the revision will clarify that the exemption can be used by any generator of an arsenical-treated wood waste, and not just by the person who originally used the product. If the requirement of the exclusion is met, disposal options would include sending the material to a Subtitle D landfill.

10. WAC 173-303-071(3)

(g)(ii) Wood treated with other preservatives provided such treated wood and wood waste (for example, sawdust and shavings) are ~~is~~, within one hundred eighty days after becoming waste:
(A) Disposed of at a landfill that is permitted in accordance with WAC 173-304-460, minimum functional standards for solid waste handling, or chapter 173-351 WAC, criteria for municipal solid waste landfills, and provided that such wood is neither a listed waste under WAC 173-303-9903 and 173-303-9904 nor a TCLP waste under WAC 173-303-090(8); or
(B) Sent to a facility that will legitimately treat or recycle the treated wood waste, and manage any residue in accordance with that state's dangerous waste regulations; or
(C) Sent off-site to a permitted TSD facility or placed in an on-site facility which is permitted by the department under WAC 173-303-800 through WAC 173-303-845. In addition, creosote-treated wood is excluded when burned for energy recovery in an industrial furnace or boiler that has an order of approval issued pursuant to RCW 70.94.152 by ecology or a local air pollution control authority to burn creosote treated wood.

Reason for amendment: This is a clarification that wood wastes are included in this exclusion. The preamble to the 1993 proposed amendments to the Dangerous Waste Regulations states that wood wastes, including sawmill sawdust and shavings, are included in the exclusion. It should be noted that sawdust and shavings from arsenical treated wood (-071(3)(g)(i)) are not excluded wastes.

11. WAC 173-303-071

(3)(o) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (~~SIC codes 331 and 332~~ NAIC codes 331111 and 332111), except that these wastes are not excluded if they exhibit one or more of the dangerous waste criteria (WAC 173-303-100) or characteristics (WAC 173-303-090);

(3)(cc)(i) Oil-bearing hazardous secondary materials (that is, sludges, by-products, or spent materials) that are generated at a petroleum refinery (~~SIC code 2911~~ NAIC code 324110) and are inserted into the petroleum refining process (~~SIC code 2911~~ NAIC code 324110 - including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units (that is, cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph: Provided, That the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in (cc)(ii) of this subsection, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (that is, from sources other than petroleum refineries) are not excluded under this section. Residuals generated from processing or recycling materials excluded under this paragraph, where such materials as generated would have otherwise met a listing under WAC 173-303-081 and 173-303-082, are designated as F037 listed wastes when disposed of or intended for disposal.
(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in (cc)(i) of this subsection. Recovered oil is oil that has been reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (~~SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172~~ NAIC codes 211111, 211112, 213111, 213112, 541360, 237120, 238910, 324110, 486110, 486910, 486210, 221210, 486210, 487110, 488210, 488999, 722310, 424710, 454311, 454312, 424720, 425110, 425120). Recovered oil does not include oil-bearing hazardous wastes listed in WAC 173-303-081 and 173-303-082; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in WAC 173-303-040.

(3) (hh) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (~~SIC code 2911~~ NAIC code 324110) along with normal petroleum refinery process streams, provided:
(i) The oil is hazardous only because it exhibits the characteristic of ignitability (as defined in WAC 173-303-090(5) and/or toxicity for benzene (WAC 173-303-090(8), waste code D018); and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process.
An "associated organic chemical manufacturing facility" is a facility where the primary NAIC code is ~~2869~~ 325110, 325120, 325188, 325192, 325193, or 325199, but where operations may also include ~~codes 2821, 2822, and 2865~~ NAIC codes 325211, 325212, 325110, 325132 325192; and is physically colocated with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials (that is, sludges, by-products, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

Reason for amendment: To correct the terminology and codes.

12. WAC 173-303-100(5)
(b) Book designation procedure. A person may determine if a waste meets the toxicity criteria by following the book designation instructions as follows:
(i) A person must determine the toxic category for each known constituent. The toxic category for each constituent may be determined from available data, or by obtaining data from the NIOSH RTECS and checking this data against the toxic category table, below. If data ~~is~~ are available for more than one of the toxicity criteria (fish, oral, inhalation, or dermal), then the data indicating severest toxicity must be used, and the most acutely toxic category must be assigned to the constituent. If the NIOSH RTECS or other data sources do not agree on the same category (for the same criteria), then the category arrived at using the NIOSH RTECS will be used to determine the toxic category. If toxicity data for a constituent cannot be found in the NIOSH RTECS, or other source reasonably available to a person, then the toxic category need not be determined for that constituent.

Reason for amendment: This modification is made to clarify the book designation process. The existing language indicates that the severest toxicity be used and that RTECS data supercedes when there are toxic category conflicts. In cases where the most severe toxicity is not in RTECS, the proper toxic category assignment was unclear. This also eliminated fish data from consideration if it was more severe than other criteria because it is no longer listed in RTECS. With this proposed change, which requires the conflicts to be within the same criteria (comparing apples to apples) the use of data for criteria that are not in RTECS is allowed.

13. WAC 173-303-104 State-specific **dangerous waste numbers**
(1) Purpose. This section sets forth the dangerous waste number for each of the dangerous waste criteria designations and for listed and characteristic waste codes that are unique to Washington State.

(2) Characteristics. A waste that exhibits any of the dangerous waste characteristics, WAC 173-303-090, must be assigned the dangerous waste number corresponding to the characteristic(s) exhibited by the waste (see WAC 173-303-090).
(a) For state-only solid corrosive wastes, the dangerous waste number of WSC2 must be assigned.
(3) Criteria. The following table must be used for assigning dangerous waste numbers to wastes designated by the dangerous waste criteria at WAC 173-303-100.

GENERIC DANGEROUS WASTE NUMBERS TABLE

Dangerous Waste#	Dangerous Waste Criteria and Designation
	Toxic Dangerous Wastes
WT01----------	EHW
WT02 ----------	DW
	Persistent Dangerous Wastes Halogenated Organic Compounds
WP01 ----------	EHW
WP02 ----------	DW
	Polycyclic Aromatic Hydrocarbons
WP03 ----------	EHW

(4) State source listed PCB wastes (WAC 173-303-9904) must be assigned the dangerous waste code of WPCB.
(5) Labpacks. State-only EHW labpacks must be assigned the dangerous waste code of WL01 and DW Labpacks must be assigned the waste code WL02.

Reason for amendment: To keep all state-specific waste codes in one location.

14. WAC 173-303-160 Containers

(3)(a) Any residues remaining in containers or inner liners that are "empty" as described in subsection (2) of this section will not be subject to the requirements of this chapter except for WAC 173-303-050 -145 and -960, and will not be considered as accumulated wastes for the purposes of calculating waste quantities.

Reason for amendment: This change subjects residues to clean up authority (-050), spills and discharges (-145) and special powers and authorities (-960). This change is consistent with safeguards contained in the regulations for other excluded wastes. Residues from hazardous waste empty containers may be mismanaged and cause a threat to human health or environment.

For example, "empty" drums may be stacked on their sides resulting in leaks onto soil or into storm drains or an "empty" rail car may have up to 70 gallons of liquid that could be discharged.

15. WAC 173-303-161(6)

An itemized listing of the chemicals, their concentrations and quantities per labpack must be kept for five years by the generator and must be readily available in case of an emergency during shipment, and for the purposes of preparing annual reports under WAC 173-303-220.

Reason for amendment: The current timeframe for maintaining a list of the labpack contents is being interpreted differently. For example, one interpretation is that the time that a list of all contents must be kept is only until the annual report is complete, which will be less than one year. If the contents of the labpack are not listed on the annual report, all record of what is actually shipped could be lost by March 1st of the following year. Adding a time limitation to this requirement provides clarity and is consistent with the time limit for maintaining other types of paperwork.

16. WAC 173-303-190(5)(b)

(5) State-only dangerous waste that is not regulated as a hazardous waste under 40 CFR Part 261 or as a hazardous material under 49 CFR must fulfill the following requirements before transport:
(a) Package in a nonleaking, nonsievable container or in a package that is equivalent to the manufacturing and testing specifications for packagings and containers of 49 CFR Parts 173, 178 and 179.
(b) Mark each package containing one thousand gallons or less with the following:

Reason for amendment: This change is made as a follow up to the transportation changes that were adopted in June 2000. The marking requirement was inadvertently noted as applying to packages containing one hundred ten gallons. This change will include the intermediate bulk containers of greater than 110 gallons but less than a thousand gallons and would also include cylinders within this range that are commonly used for antifreeze. Most people are already marking in accordance with the higher amount (one thousand gallons) as it does not make sense for the marking requirement to apply to small, but not intermediate sized containers.

17. WAC 173-303-201 Special accumulation standards.

(2)(e) The generator does not need to comply with 40 CFR Part 265.176 and 178.

Reason for amendment: This correction is being made since requirements for containers are already cited in WAC 173-303-200 and apply to this section as well. This subsection was advertently added for consistency with federal requirements for air emission standards and the references to WAC 173-303-630 were unnecessary.

18. WAC 173-303-320(2)(a)

Make gender neutral

19. WAC 173-303-400 Interim status facility standards

(3) Standards
(ix) "Subpart G – closure and post-closure" section 265.112(4)(d) is modified to read "The owner or operator must submit the closure plan to the department at least 45 days prior to the date on which they expect to begin closure of a tank, container storage, or incinerator unit, or final closure of a facility with such a unit." In addition, section 265.112(4)(d) is modified to read "Owners or operators with approved closure plans must notify the department in writing at least 45 days prior to the date on which they expect to begin closure of a tank, container storage, or incinerator unit, or final closure of a facility with such a unit." Section 265.115 is modified to read "Within 60 days of closure of each dangerous waste management unit (including tank systems and container storage areas) and within 60 days of completion of final closure, the owner or operator must submit to the department, by registered mail, a certification that the dangerous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan." In addition, the clean-up levels for removal or decontamination set forth at WAC 173-303-610(2)(b) apply.

Reason for amendment: Owners and operators of interim status facilities are currently required to submit closure certification within 60 days of completion of closure for each dangerous waste management unit and within 60 days for completion of final closure. The proposed change clarifies this requirement by making it a complete sentence. In addition, a change is being proposed to require owners or operators of interim status facilities to submit a closure plan and to notify Ecology of a partial closure of a tank, container storage, or incinerator unit at least 45 days prior to date on which they expect to begin closure of such a unit. The change clarifies that owners or operators must submit closure certification for partial closures of any dangerous management unit. Partial closure of these units will be subject to public comment on the closure and to Ecology oversight, which is consistent with closure requirements.

20. WAC 173-303-505 Special requirements for recyclable materials used in a manner constituting disposal.

(1) Applicability. (a) This section applies to recyclable materials that are applied to or placed on the land: (i) Without mixing with any other substance(s); or
(ii) After mixing or combining with any other substance(s). These materials will be referred to as "materials used in a manner that constitutes disposal."
(b)(i) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the product so as to become inseparable by physical means and if such products meet the applicable treatment standards in 40 CFR Part 268 Subpart D (or applicable prohibition levels in 268.32 or RCRA section 3004(d), where no treatment standards have been established) for each recyclable material (i.e., hazardous waste) that they contain. Registered commercial fertilizers that are produced for the general public's use that contain recyclable materials also are not subject to regulation provided they meet these same treatment standards or prohibition levels for each recyclable material that they contain. For the purpose of implementation of this section, fertilizers that contain recyclable material derived from state-only waste must also meet the treatment standards in 40 CFR Part 268 Subpart D that apply to the characteristics of dangerous waste that the state-only waste exhibits. The prohibition levels for fertilizer using K061, in mg/l,

are as follows: Arsenic, 5.0; Barium, 100.0; Cadmium, 1.0; Chromium (Total), 5.0; Lead, 5.0; Mercury, 0.20; Selenium, 5.7; and Silver, 5.0. The department may recommend registration under chapter 15.54 RCW for a waste-derived fertilizer (including fertilizers that contain recyclable material) or micronutrient fertilizer: Provided, That the registrant submits the information described in (b)(i)(A) or (B) of this subsection. However, the information requirements in (A) of this subsection may not be required if: the registrant provides documentation that the fertilizer has been previously registered in Washington state two or more times using the information in (A), and the source materials used to manufacture the product have not changed.

Reason for amendment: Fertilizer registration applications are approved or denied based on reviews conducted by Ecology and the Washington State Department of Agriculture as directed by chapter 15.54 RCW. Ecology reviews waste-derived fertilizers and makes recommendations for registration as described in WAC 173-303-505.

Currently, Ecology's review process requires the registrant of a waste-derived fertilizer to submit either: 1) toxicity characteristic leaching procedure (TCLP) metals test data and halogenated organic compounds (HOC) test data, or 2) a complete description of the fertilizer manufacturing process including a list of all ingredients in the fertilizer and the sources of those ingredients to include a description of the original generation process for each ingredient as well as evidence that any wastes used in the product do not designate as a dangerous waste according to the procedures in WAC 173-303-070. The information in either 1) or 2), above, is currently required for every renewal of a waste-derived fertilizer registration, and if the registrant chooses option 1), above, the TCLP and HOC test data must be rerun with each renewal.

The proposed rule amendment for WAC 173-303-505 would provide Ecology the discretion to accept a waste-derived fertilizer registration renewal without requiring new TCLP and HOC test data. This discretion is limited to renewals of waste-derived fertilizers that have provided this information to Ecology at least twice before. The rule change would also require the registrant to provide documentation that the source materials in the product have not changed.

Ecology does not find it necessary to require new test data for renewals of waste-derived fertilizers that have met the TCLP and HOC testing requirements at least twice before. The expense of these tests, typically several hundred dollars, is also a factor in this proposed rule change. However, the proposed rule amendment provides Ecology with the option to continue to require updated TCLP metals and HOC testing for registration renewals. Thus, if there were inconsistencies in prior test results or other concerns regarding a particular product, Ecology may require up-to-date test results with any renewal application.

21. WAC 173-303-610 Closure and post-closure

(2) Closure performance standard.

(b) Where the closure requirements of this section, or of WAC 173-303-630(10), 173-303-640(8), 173-303-650(6), 173-303-655(6), 173-303-655(8), 173-303-660(9), 173-303-665(6), 173-303-670(8), 173-303-680 (2) through (4), or 40 CFR 264.1102 (incorporated by reference at

WAC 173-303-695) call for the removal or decontamination of dangerous wastes, waste residues, or equipment, bases, liners, soils or other materials containing or contaminated with dangerous wastes or waste residue, then such removal or decontamination must assure that the levels of dangerous waste or dangerous waste constituents or residues do not exceed:
(i) For soils, ground water, surface water, and air, the numeric cleanup levels calculated using unrestricted use exposure assumptions according to the Model Toxics Control Act Regulations, chapter 173-340 WAC as of the effective date or hereafter amended. Primarily, these will be numeric cleanup levels calculated according to MTCA Method B, although MTCA Method A may be used as appropriate, see WAC 173-340-700 through 173-340-760, excluding WAC 173-340-745; and

Reason for amendment: This change corrects the reference to standards in the MTCA regulations.

22. WAC 173-303-610 Closure and post-closure.
(3) Closure plan; amendment of plan.
(c) Notification of partial closure and final closure.
(i) The owner or operator must notify the department in writing at least sixty days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, land treatment, or landfill unit, or final closure of a facility with such a unit. The owner or operator must notify the department in writing at least forty-five days prior to date of which he expects to begin closure of a treatment or storage tank, container storage, or incinerator unit, or final closure of a facility with such a unit.

Reason for amendment: The change requires owners or operators of final status facilities to notify Ecology of a partial closure of a tank, container storage, or incinerator unit. An owner or operator of an final status facility is not currently required to notify Ecology before beginning a partial closure of a tank, container storage, or an incinerator unit. This change requires an owner or operator of a final status facility to notify Ecology of a closure of a tank, container storage, or incinerator unit at least 45 dates prior to the date of which they expect to begin closure of such a unit. In the past, Ecology often lacked documentation that closure of these units prior to a facility's final closure was completed according to the requirements in the Dangerous Waste Regulations. Facilities will now be required to notify Ecology of these partial closures prior to beginning closure and submit closure certification as required for these closures. The lack of documentation has been an issue when a facility is undergoing final closure and there is no record in Ecology's files or in the facility's files about whether clean closure according to the regulations was achieved.

23. WAC 173-303-640 Tank systems
(4)(i) All tank systems, until such time as secondary containment that meets the requirements of this section is provided, must comply with the following:

(A) For nonenterable underground tanks, a leak test that meets the requirements of subsection (2)(c)(v) of this section or other tank integrity method, as approved or required by the department, must be conducted at least annually.
(B) For other than nonenterable underground tanks, the owner or operator must either conduct a leak test as in (i)(A) of this subsection or develop a schedule and procedure for an assessment of the overall condition of the tank system by an independent, qualified registered professional engineer. The schedule and procedure must be adequate to detect obvious cracks, leaks, and corrosion or erosion that may lead to cracks and leaks. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed. The frequency of these assessments must be based on the material of construction of the tank and its ancillary equipment, the age of the system, the type of corrosion or erosion protection used, the rate of corrosion or erosion observed during the previous inspection, and the characteristics of the waste being stored or treated.
(C) For ancillary equipment, a leak test or other integrity assessment as approved by the department must be conducted at least annually.

Note: Three publications are available as guidance: Tank Inspection, Repair, Alteration, and Reconstruction, API Standard 653, Addendum 4 issued in December 1999; Guidance for Assessing and Certifying Tank Systems that Store and Treat Dangerous Waste, Ecology Publication No. 94-114; and Steel Tank Institute publication #SP001-00 Standard for Inspection of In-Service Shop Fabricated Aboveground Tanks for Storage of Combustible and Flammable Liquids copyright 2000.

Reason for amendment: This note is being modified since this publication is now out of date and the copy available for Ecology staff states that it is "For Historical Purposes Only". It is misleading to refer to the outdated American Petroleum Institute (API) publication that is essentially impossible for a facility operator to obtain and is no longer used by the industry. Other guidance on this topic is available.

24. WAC 173-303-640 Tank systems

(7)(d) Notifications, reports.
(i) Any release to the environment must be reported to the department and other authorities immediately in accordance with WAC 173-303-145. Any release above the "reportable quantity" must also be reported to the National Response Center pursuant to 40 CFR Part 302.
(ii) Within thirty days (or fifteen days if classified as an emergency) of detection of a release to the environment, a report containing the following information must be submitted to the department:
(A) Likely route of migration of the release;
(B) Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);
(C) Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within thirty days, these data must be submitted to the department as soon as they become available;
(D) Proximity to downgradient drinking water, surface water, and populated areas; and
(E) Description of response actions taken or planned.
(F) In the event of an emergency, additional information as required by WAC 173-303-360.

Reason for amendment: These changes bring this subsection into alignment with the other sections in the Dangerous Waste Regulations that require reporting for spills. The existing rule language in section -640 stating that spills/releases from tanks that go to the environment need to be reported within 24 hours conflicts with the requirements of section -145, and if a spill is classified as an emergency with contingency plan implementation, then it would also conflict with -360(2) requirements. In addition to the "immediate" vs. 24-hour notification, -640(7) specifies a report of the release within 30 days. Again, if the release was classified as an emergency with implementation of the contingency plan, a report is required within 15 days (see -360(2)(k). Also, existing -640(7)(d)(ii) states that if a release is below the reportable quantity (RQ), then no reporting is required. This is yet another conflict with -145, which specifies that any amount is reportable if it impacts human health or the environment.

25. WAC 173-303-802(5)

(5) Totally enclosed treatment facilities or elementary neutralization or wastewater treatment units.

(a) The owner or operator of a totally enclosed treatment facility or an elementary neutralization or wastewater treatment unit that treats ~~state-only~~ dangerous wastes generated on or off site, ~~or federally regulated hazardous wastes generated on site~~ will have a permit by rule, ~~except as provided~~ subject to limitations in (b) and (c) of this subsection, if they:

(i) Have an NPDES permit, state waste discharge permit, pretreatment permit (or written discharge authorization from the local sewerage authority) issued by the department, or pretreatment permit (or written discharge authorization) from a local sewage utility delegated pretreatment program responsibilities pursuant to RCW 90.48.165, and the permit or authorization covers the waste stream and constituents being discharged;

(ii) Include the wastestream in the permit application;

(ii~~i~~) Comply with the conditions of that permit;

(i~~ii~~v) Comply with the following regulations:

(A) WAC 173-303-060, notification and identification numbers;

(B) WAC 173-303-070, designation of dangerous waste;

(C) WAC 173-303-283, performance standards;

(D) WAC 173-303-300, general waste analysis;

(E) WAC 173-303-310, security;

(F) WAC 173-303-350, contingency plan and emergency procedures;

(G) WAC 173-303-360, emergencies;

(H) WAC 173-303-370, manifest system;

(I) WAC 173-303-380 (1)(d), operating record;

(J) WAC 173-303-390, facility reporting.

~~(b) The owner or operator of a wastewater treatment unit that treats federally regulated hazardous wastes received from off site will have a permit by rule, except as provided in (c) of this subsection, if:~~

~~(i) The facility has received a permit (or interim status) for treatment, storage, or disposal of hazardous wastes in accordance with WAC 173-303-800, 173-303-801, and 173-303-804 through 173-303-840; and~~

(b) The owner or operator of a wastewater treatment unit may treat dangerous wastewater received from off site provided the wastewater is generated within the same industry and the wastewaters will be effectively treated by the wastewater treatment unit, if:
(i~~i~~) The owner or operator complies with (a)(i) through (i~~ii~~v) of this subsection.
(c) The department may require the owner or operator of a totally enclosed treatment facility or an elementary neutralization or wastewater treatment unit subject to (a) or (b) of this subsection to apply for and obtain a final facility permit or a permit modification in accordance with WAC 173-303-800 through 173-303-840, if:
(i) The owner or operator violates the general facility or performance requirements specified in (a) of this subsection;
(ii) The owner or operator is conducting other activities which require him to obtain a final facility permit;
(iii) The department determines that the general facility or performance requirements specified in (a) of this subsection, are not sufficient to protect public health or the environment and that additional requirements under this chapter are necessary to provide such protection; or
(iv) The owner or operator does not comply with applicable local, state or federal requirements established pursuant to sections 402 or 307(b) of the Federal Clean Water Act, or chapter 90.48 RCW.

Reason for amendment: The purpose of this rule change is to allow facilities that operate wastewater treatment units under Permit by Rule (PBR) as described in WAC 173-303-802 (5) to receive hazardous wastewaters that have been generated from off site. This change reflects an interpretation by USEPA that allows wastewater treatment units to be considered designated facilities as identified by a generator's Uniform Hazardous Waste Manifest.

For example, this change will benefit those industries and businesses that operate wastewater treatment units under PBR by allowing them to take wastewaters from their off-site subsidiaries (or other similar industry wastewaters) for treatment, rather than having to send the wastewater to a third party for treatment. Industries or businesses that would benefit from this change include the aerospace and petroleum refinery industries as well as some government facilities.

The scope of this rule change will be limited to the receipt of wastewaters from off-site that are from a similar industry and have similar dangerous constituents to those in the wastewaters that are normally generated and treated by the host wastewater treatment unit. In others words, the host could only accept wastewaters that will be covered by permit requirements and will be effectively treated by the wastewater treatment facility. Businesses wanting to take advantage of this change should plan to do so when their wastewater discharge permit is up for renewal.

What this change will not do is open up opportunities for businesses to operate under permit by rule and receive wastewater from unrelated off-site sources. The potential receiving facility must have a wastewater treatment unit that was designed to treat wastewaters that are generated on-site before it would be eligible to receive similar wastewaters from off-site generated by their associated businesses.

26. WAC 173-303-803(3)(c) Permit application requirements.

(3) **Contents of part A of the permit application.** Part A of the final facility permit application must include the following information:
(a) The activities conducted by the applicant that require it to obtain a permit under the Hazardous Waste Management Act;
(b) Name, mailing address, and location, including latitude and longitude of the facility for which the application is submitted;
(c) Up to four NAICS codes that best reflect the principal products or services provided by the facility;

Reason for amendment: Correction to change SIC codes to NAICS codes.

27. WAC 173-303-910 Petitions

(1)(c) The department will make a tentative decision to grant or deny the petition and give public notice of the tentative decision in writing. The notice will be distributed to interested persons on a mailing list developed specifically for petitions and persons expressing interest in amendments to this chapter. The public comment period will be a minimum of twenty-one days.

The same change will be made at WAC 173-303-910(6)(f)(i)

Reason for amendment: The Administrative Procedures Act, Chapter 34.05 RCW, limits the amount of time for a petition to be acted upon by an agency to 60 days total. This includes the time to initially review the petition, make a tentative decision, obtain public comment, then review those comments and make a final decision. The current 45 day minimum public comment period in WAC 173-303-910(1)(c) does not allow adequate time for the agency to review the petition, and to obtain and review public comment, then make a final decision. The shorter minimum public comment period will make it more feasible to meet the time limitations imposed by the Administrative Procedures Act.

28. WAC 173-303-9904

K062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (~~SIC Codes 331 and 332~~ NAIC 331111 and 332111). (C,T)

Reason for amendment: Correction to change SIC codes to NAICS codes.

29. WAC 173-303-9905 W001 Listing

The waste code W001 will be changed to WPCB at the following locations:
WAC 173-303-071(3)
(k) Polychlorinated biphenyl (PCB) wastes:
(ii) Wastes that would be designated as dangerous waste under this chapter solely because they are listed as WPCB under WAC 173-303-9904 when such wastes are stored and disposed in a manner equivalent to the requirements of 40 CFR Part 761 Subpart D for PCB concentrations of 50 ppm or greater.

And
WAC 173-303-515
(5) **Prohibitions.** The prohibitions of 40 CFR Part 279.12 are incorporated by reference. The prohibitions for managing materials under this section include those listed in 40 CFR Part 279.12 and the following:
(a) Materials designating as EHW or WPCB cannot be managed under this section when burned for energy recovery. Note: Materials managed under this section containing 2 ppm or greater PCBs are subject to applicable requirements of 40 CFR Part 761.20(e).
and
WAC 173-303-9904
WPCB - Discarded transformers, capacitors or bushings containing polychlorinated biphenyls (PCB) at concentrations of 2 parts per million or greater (except when drained of all free flowing liquid) and the following wastes generated from the salvaging, rebuilding, or discarding of transformers, capacitors or bushings containing polychlorinated biphenyls (PCB) at concentrations of 2 parts per million or greater: Cooling and insulating fluids and cores, including core papers. (Note--Certain PCB wastes are excluded from this listing under WAC 173-303-071 (3)(k). The generator should check that section to determine if their PCB waste is excluded from the requirements of chapter 173-303 WAC.)

Reason for amendment: The state waste code for PCB is being changed from W001 to WPCB to prevent confusion since EPA now uses "W001" as a form code for the Hazardous Waste Report Instructions and Forms. EPA changed the code for lab packs to W001. These codes have already been changed for the purposes of reporting as of January 2003.

30. Changes to correspond to the new solid waste regulation, chapter 173-350 WAC.
WAC 173-303-070 Designation of dangerous waste
(8) Small quantity generators.
(b) Small quantity generators will not be subject to the requirements of this chapter if they:
(iii) Either treat or dispose of their dangerous waste in an on-site facility, or ensure delivery to an off-site facility, either of which, if located in the United States, is:
(C) Permitted to manage moderate-risk waste under chapter 173-350 WAC (), operated in accordance with state and local regulations, and consistent with the applicable local hazardous waste plan that has been approved by the department;
and
WAC 173-303-600 Final facility standards. Purpose, scope, and applicability.
(3) The final facility standards do not apply to:
(e) The owner or operator of a facility which is permitted to manage solid waste pursuant to chapter 173-350 WAC, if the only dangerous waste the facility manages is excluded from regulation under this chapter by WAC 173-303-070(8);

Reason for amendment: To conform to new solid waste regulation citations.

31. WAC 173-303-045
(1) Any references in this chapter to any parts, subparts, or sections from EPA's hazardous waste regulations, including 40 CFR Parts 260 through 280 and Part 124, are in reference to those rules

as they existed on ~~July 1, 1999~~ July 1, 2003. Copies of the appropriate referenced federal requirements are available upon request from the department.

Reason for amendment: Updates the version of 40 CFR for provisions that are incorporated by reference.

32. WAC 173-303-600(3)(g)

A transporter storing a manifested shipment of dangerous waste for ten days or less in accordance with WAC 173-303-240~~(5)~~ (6);

Reason for amendment: Citation correction.

33. Incorporating federal delistings

WAC 173-303-045

(4) Federal delistings

(a) 40 CFR Appendix IX Table 2 DOE- RL- Effluents (EPA Hazardous Waste Nos. F001, F002, F003, F004,F005, and F039 derived from F001 through F005) generated from the 200 Area Effluent Treatment Facility (ETF) located at the Hanford site (at a maximum generation rate of 19 million gallons per year) after June 13, 1995.

Note: See WAC 173-303-910(3) for procedures for delisting a waste from this chapter.

WAC 173-303-910(3)

(i) A waste that has been delisted by EPA (see WAC 173-303-045) is not exempt from the requirements of this chapter until the generator has been notified by the department that his waste is exempt in accordance with this subsection.

Reason for amendment: To provide a reference to wastes that have been delisted by EPA. Note that for a waste to be fully delisted and exempt from the regulations, it must also go through the state petition process.

34. WAC 173-303-515(13):

Testing required. Notwithstanding any other provisions of this section, the department may require any person to test their used oil according to the methods set forth in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication, SW-846* to either determine if the used oil is on-specification as described in WAC 173-303-515(4), determine whether the used oil contains a listed hazardous waste, or determine if the used oil is prohibited from being managed as used oil in WAC 170-303-515(5).

Reason for amendment: Ecology is proposing to amend the used oil management standards to include a section that gives the agency the ability to require generators of used oil to test their waste to identify if the oil is on or off specification oil or to rebut the presumption that the oil is actually dangerous waste. This regulation will simplify testing requirements and be a benefit to used oil generators by resulting in less expensive testing.

In the past when an Ecology inspector had reason to believe that used oil was not on-specification oil, the only means to require testing was to declare the waste a solid waste and require dangerous waste designation testing in WAC 173-303-070. Designation testing can be much more expensive and involve more tests than the testing that is required in the proposed WAC 173-303-515(13) to determine if a waste is on-specification used oil or off-specification used oil. There are also instances when used oil is high in chlorinated compounds. In many instances it does not mean that dangerous waste was added to the oil, but that the oil was contaminated with salt water. However, to rebut this presumption the new testing authority under WAC 173-303-515(13) would allow the agency to ask for a test for just chlorinated compounds to ensure that dangerous waste was not mixed with the used oil.

35. WAC 173-303-300(2) General Waste Analysis

(2) The owner or operator must obtain a detailed chemical, physical, and/or biological analysis of a dangerous waste, or nondangerous wastes if applicable under WAC 173-303-610 (4)(d), before ~~he~~ they store~~s~~, treat~~s~~, or dispose~~s~~ of it. This analysis must contain the information necessary to manage the waste in accordance with the requirements of this chapter ~~173-303 WAC~~. The analysis ~~may~~ must include or consist of either existing published or documented data on the dangerous waste, or on analytical data from waste generated from similar processes, or data obtained by testing, ~~if necessary~~ or a combination of these.

(a) When a dangerous waste management facility uses information or knowledge from the generator to complete a waste profile for a waste instead of direct analysis of a sample, that information must meet the definition of "knowledge" as defined in WAC 173-303-040. To confirm the reliability of the information or knowledge the facility must do one or more of the following, as applicable:
(i) be familiar with the generator's processes by conducting site visits, and reviewing sampling data and other information provided by the generator to ensure they are adequate for safe management of the waste;
(ii) ensure waste analysis contained in documented studies on the generator's waste are based on representative and appropriate sampling and test methods;
(iii) compare the generator's waste generating process to documented studies of similar waste generating processes to ensure the waste profile is accurate and correct.
(b) As required in WAC 173-303-380(1)(c), records must be retained containing specific information that show compliance with this subsection for adequate information on the waste whether the owner or operator conducts direct testing on the waste or relies on knowledge from the generator,

New definition in WAC 173-303-040

"Knowledge" means there is sufficient information about both the waste constituents and the process generating a waste to reliably substitute for direct testing of the waste. Such information must include the chemical, physical, and/or biological characteristics of the waste. (For example, if all chemical constituents used in an industrial process generating a waste are known and the formation of the waste by-products from that industrial process are understood, that information may be sufficient without direct laboratory analysis to describe the waste for safe management under this chapter.)

Note: Knowledge as defined here is for purpose of complying with WAC 173-303-070(3)(c) and -300(2).

Reason for amendment: Ecology is proposing to amend the regulations to be consistent with both federal guidance and current final permits at dangerous waste management facilities on the subject of waste analysis and the use of generator knowledge.

In current permits, facilities have been allowed to rely on generator knowledge to complete waste profiles and make waste acceptance decisions with the understanding that knowledge is documented and supported with evidence in the form of documented data and observations. This policy, utilized in final permits, has allowed treatment, storage, and recycling facilities to avoid unnecessary and costly laboratory analysis. In return, waste analysis plans have been allowed to include test methods and analysis for the purpose of safety and proper waste management instead of focusing only on methods used for waste designation or identification. When Chapter 173-303 WAC specifies a method, "representative and appropriate sampling and test methods" refer to methods in WAC 173-303-110 for formal waste designation and other regulatory requirements. However, other representative and appropriate sampling and test methods are not precluded when needed to develop a complete waste characterization to support an accurate waste profile used by dangerous waste management facilities to comply with their permit or WAC 173-303-300, general waste analysis.

This amendment reflects the evolution in thinking by the HWTR's permit program, brings the regulations into greater consistency with the permits that are in place at this time, and aligns Ecology with current federal guidance on waste analysis.

The following are concepts for which draft language is not yet available.

36. Chemical Testing Methods Update

Revisions to State-only persistence criteria for halogenated organic compounds in Chapter 3, Section C of Ecology publication #97-407 '*Chemical Testing Methods for Designating Dangerous Waste*'

Ecology has received numerous comments and concerns about the current regulations and guidance for determining persistence for halogenated organic compounds (HOCs) as described in the guidance above. The main concerns identified are:

- Ecology's current definitions identifies all HOCs as compounds of concern regardless of the environmental impact those compounds may or may not have,
- The universe of HOCs is so large and HOCs are so widely used that it is difficult if not impossible to accurately identify state-only persistent wastes,
- Ecology's current guidance does not clearly identify how to obtain the information (detailed analyses) needed to determine state-only persistence, and
- Ecology's current guidance is inconsistent and difficult to follow.

Based on this input, Ecology is revising the guidance *'Chemical Testing Methods for Designating Dangerous Waste'*. These revisions will be limited solely to the sections dealing with state-only designation of HOCs (Chapter 3, Section C). The remainder of the guidance will not be changed during this process and is not open for comment or review.

Ecology's revisions of Chapter 3, Section C will provide the following:

1. A revision of the screening techniques used for liquid waste which will determine more easily and cheaply whether or not a liquid waste contains sufficient HOCs to designate as state-only toxic waste,
2. A table of specific compounds which Ecology currently identifies as persistent compounds or compounds that have potential persistent issues for those waste streams that have limited and known HOCs,
3. More detailed criteria on how this list of compounds is identified,
4. Identification of how chemicals will be added to or deleted from this list of concerned chemicals as additional scientific information is made available,
5. Improved definitions and examples of waste streams that are exempt from these criteria, and
6. Two flow charts that can be used to follow the designation process and, hopefully, clarify how the designation is to be accomplished.

Detailed information on these changes will be provided when rule amendments are proposed.

37. Hazardous Waste Facilities Initiative

We are again asking for comment on options to implement the Hazardous Waste Facilities Initiative. Ecology is considering making amendments to the Dangerous Waste Regulations that affect hazardous waste treatment, storage, disposal and recycling facilities, and used oil processors that accept wastes from off-site. These amendments will not change the way in which on-site recycling and treatment are done by hazardous waste generators, or waste collection and handling facilities operated by local governments (e.g., household hazardous waste collection, used oil collection).

Please provide information and comment on the following options regarding these hazardous waste facilities. The options under consideration are:

Option 1: Applying traditional site specific requirements to hazardous waste recycling facilities and used oil processors. Currently, hazardous waste treatment, storage and disposal facilities must, among other things, provide the following:

- A closure plan that describes how buildings, structures and equipment that manage hazardous wastes will be closed in a safe and timely manner;
- Pollution legal liability (PLL) coverage to pay for claims by third parties that are damaged from a release of hazardous wastes; and,

- A cost estimate for closure and financial assurance to pay for waste removal, decontamination and clean up (financial assurance).

Recyclers and used oil processors are currently exempt from these requirements. Option 1 would extend the requirements listed above to recycling facilities and used oil processors. This approach results in specific cost estimates for closure based on a full inventory of wastes, third party costs, and no resale value of wastes in process.

Option 2: Developing a more streamlined approach for off-site recycling facilities and used oil processors. Under this option, recyclers and used oil processors would be required to address the eventual closure of their operations by:

- Preparing a closure plan; and
- Providing a maximum of $50,000 in financial assurance. This amount could be lower if the facility owner or operator prepares a detailed closure cost estimate and justification for review and approval by Ecology.

This option would also consider deleting the requirement for pollution liability coverage for third party damages.

Commenters are requested to respond to the following questions:

Q1. Do you have a preference for an option listed above? If so, which option and why?

Q2. Are there other options that Ecology should consider that will help assure safe and orderly closure of hazardous waste management facilities and that owners/operators pay for a significant portion of the cost of closure?

Q3. Are there factors other than closure plans, closure cost estimates, liability coverage, and financial mechanisms for assuring closure funding (e.g., bond, letter of credit, insurance) that Ecology should consider?

Q4. Would you be willing to pay slightly more (e.g., 5%) for waste treatment, disposal or recycling for greater assurance that the facility managing the waste would pay for waste removal and decontamination of their facility in the event of bankruptcy, sale, or closure?

Q5. If you are a generator or facility, do you have any available information on closure cost estimates for hazardous waste recycling or used oil processing operations?